

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC., and	:	
NICE SYSTEMS, LTD.	:	
	:	
Plaintiffs	:	
	:	
v.	:	Civil Action No. 06-311-JJF
	:	
WITNESS SYSTEMS, INC.	:	
	:	
Defendant	:	

MEMORANDUM ORDER

Trial in this case will commence on January 14, 2008. The parties are in the midst of final preparations for the trial and are unable to resolve certain disputes concerning scheduling matters. After reviewing the recent submissions of the parties, the Court resolves the disputes as follows:

Plaintiff's Infringement Contentions

I. Number of Patents & Patent Claims at Issue

At this time, the Court finds that Plaintiff has sufficiently narrowed its case to be understandable and manageable for a jury trial. The Court accepts Plaintiff's representation that further narrowing could and would occur if Defendant narrowed its invalidity contentions.

II. Number of Defendant's Products at Issue

The Court finds Plaintiff's assertion that it has accused five (5) core recording products needs to be further refined by the specific identification of the five products that will be at issue before the jury.

Plaintiff shall provide this information to Defendant and the Court no later than December 17, 2007.

Expert Reports & Expert Depositions

The Court adopts the schedule proposed by Plaintiff in its December 12, 2007 letter at page 3 (D.I. 272).

The Court finds that the following facts support the schedule proposed by Plaintiff: the parties' awareness of the trial date at an early stage of the case; the parties' extensive submissions in connection with the Markman hearing; the parties' similar litigation in Georgia; the parties' preparation of a proposed pre-trial order, and; Defendant's re-examination filings. In the Court's view, these events and the resources of the parties and counsel clearly demonstrate the reasonableness of Plaintiff's proposal.

Finally, the Court finds that the assertion that any expert witness is "unavailable" to the parties in the thirty day period prior to a long scheduled trial is untenable and an issue for the witness's proponent, not the pre-trial schedule.

Claim Construction

The Court has issued a tentative claim construction to facilitate the parties' preparation of their technical expert witnesses. However, a final decision concerning the disputed claim language will be issued at the post-trial prayer conference.

December 14, 2007


UNITED STATES DISTRICT JUDGE